

2003

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Jeffrey D. Gram

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## Recommended Citation

Gram, Jeffrey D. (2003) "Aiding the Iraq Debate?," *William Mitchell Law Review*: Vol. 30: Iss. 1, Article 20.  
Available at: <http://open.mitchellhamline.edu/wmlr/vol30/iss1/20>

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## AIDING THE IRAQ DEBATE?

Jeffrey D. Gram<sup>†</sup>

*The War Over Iraq: Saddam's Tyranny and America's Mission.* By Lawrence F. Kaplan and William Kristol. *Encounter Books*, 2003. 125 pages. \$25.95.

After dismissing international pre-attack antiwar sentiment, President George W. Bush and his administration have come under increasing criticism for their justifications for the recent U.S.-led attacks on Iraq. One such criticism is the administration's failure to discover weapons of mass destruction in Iraq.<sup>1</sup> A related criticism, making recent news, is the faulty intelligence used by President Bush in his State of the Union address to bolster his case for war.<sup>2</sup>

Clearly, the heated pre-war debate over the justifications for attacking Saddam Hussein's regime remains prominent in post-war public discourse. As this geopolitical discussion continues, reading *The War Over Iraq* will benefit those seeking an informed account of the events that led to the war and an analysis of U.S. foreign policy toward Iraq. However, the authors fall short of their aim to provide an "honest and straight-forward argument"<sup>3</sup> in their advocacy of the

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<sup>†</sup> Executive Editor, *William Mitchell Law Review*, Volume 30.

1. Jeanne Cummings & David Cloud, *Leading the News: White House Gets Increased Scrutiny Of Prewar Claims*, WALL ST. J., July 14, 2003, at A3 (reporting increased scrutiny of the White House's failure to find weapons of mass destruction).

2. Dana Milbank & Mike Allen, *Bush Skirts Queries on Iraq Nuclear Allegation; Aides Have Backed Off State of Union Assertion*, WASH. POST, July 10, 2003, at A1 ("The White House acknowledged . . . that the intelligence underlying the president's assertion [that Iraq attempted to buy nuclear materials from Africa] was incorrect and should not have been in his State of the Union speech"); Walter Pincus & Dana Priest, *Lawmakers Begin Iraq Intelligence Hearings; White House Continues To Defend War Decision*, WASH. POST, June 19, 2003, at A16 (reporting the launch of congressional hearings into intelligence the Bush administration used to justify the war on Iraq).

3. "In arguing for the liberation of Iraq, we try to make the case for war honestly and straight-forwardly, so the debate can be joined." LAWRENCE F. KAPLAN & WILLIAM KRISTOL, *THE WAR OVER IRAQ: SADDAM'S TYRANNY AND AMERICA'S*

### Bush Doctrine.

In three sections, this concise position piece provides a history of Saddam Hussein's brutal regime, a critical analysis of previous administrations' foreign policy toward Iraq, and an explanation of and argument for the Bush Doctrine. In doing so, the book provides a well-researched history of events that led to the war and argues for a broad application, beyond Iraq, of the policies behind the Bush administration's push for the war against Iraq.

The authors' position is clearly stated in the book's introduction: "We believe it is vital to liberate Iraq and to liberate ourselves from the dangers that Iraq presents. But we also believe that the principles that have persuaded the Bush administration to pursue this course should guide our foreign policy more broadly. That is the argument of this book."<sup>4</sup>

The text begins with "a detailed account of Saddam's evil."<sup>5</sup> Chapter 1 describes Saddam's rise to power and his "[t]yranny at home."<sup>6</sup> Indeed, the grisly accounts of intimidation, blackmail, torture, rape, and murder illuminate the broad assertions of Saddam's tyranny contained in popular political discourse.<sup>7</sup> The accounts, citing reports from the United Nations Human Rights Commission, Amnesty International, along with respected newspapers and periodicals, appear well-researched and credible.

Similarly, the next two chapters are impressive in their documentation of Saddam's aggression against Iran and Kuwait as well as the history of weapons inspections in Iraq. Although thoroughly researched, some evidence of Iraqi wrongdoing lacks persuasiveness. For example, statements attributed to CIA Director George Tenet include the documentation of "contacts between Iraqi and Al Qaeda agents" and "solid evidence of the presence in Iraq of Al Qaeda members."<sup>8</sup> Given recent blows to the credibility of Bush administration intelligence,<sup>9</sup> including that of the CIA,<sup>10</sup>

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MISSION ix. (Encounter Books 2003) [hereinafter "THE WAR OVER IRAQ"].

4. *Id.* at viii.

5. *Id.* at ix.

6. *Id.* at 3.

7. One account tells of Saddam's attempt to blackmail a director of an Iraqi intelligence agency. Having failed to find any "dirt" on him, Saddam ordered the man's daughter drugged and raped. The videotape of her "having sex" with her attacker was to be used as blackmail. But shortly after the attack, the man was murdered. *Id.* at 9.

8. *Id.* at 23.

9. See Milbank & Allen and Pincus & Priest, *supra* note 2 and accompanying text.

this evidence appears less reliable now than it might have at the time of the book's publication, just months ago. Also, as might be expected, this book offers no convincing evidence of Iraq's recent pre-war possession of weapons of mass destruction. Rather, it merely cites Bush administration and British government claims.<sup>11</sup>

Following the chapters detailing Saddam's cruelty, the authors include a three-chapter critical analysis of U.S. foreign policy toward Iraq since 1980. The first Bush administration, the authors note, attempted to bring Iraq into the "family of nations" while effectively ignoring Iraq's treatment of its people and neighbors<sup>12</sup>—that is, until Iraq invaded Kuwait in 1990. But even then, the book argues, George H. W. Bush mistakenly stopped short of ousting Saddam Hussein in the Gulf War, preferring stability over an inevitable and uncertain power vacuum.<sup>13</sup>

President Bill Clinton's problem was his "ambivalence about the use of force as an instrument of policy."<sup>14</sup> The authors charge Clinton with following a policy of "wishful liberalism" in which his hopes of "containing" Saddam led to failed weapons inspections and sporadic, ineffective military strikes.<sup>15</sup>

Despite the failures of past administrations, the authors argue President George W. Bush's administration<sup>16</sup> has set a course for a

10. David S. Cloud, *In Senate Hearing, Tenet Takes Heat From Both Sides of the Aisle*, WALL ST. J., July 17, 2003, at A4 (reporting Senate accusations that CIA Director Tenet damaged President Bush's credibility by "failing to ensure that the reference [to faulty intelligence] was removed from Mr. Bush's State of the Union speech").

11. THE WAR OVER IRAQ, *supra* note 3, at 33 ("Finally, in September 2002, the Bush administration and the British government presented further evidence that Iraq had been reconstituting its arsenal, including satellite photos and documents detailing Saddam's renewed effort to build long-range ballistic missiles.").

12. *Id.* at 41.

13. *Id.* at 47.

14. *Id.* at 51.

15. *Id.* at 50, 62.

16. The authors note that several in the Bush administration, including Secretary of State Donald Rumsfeld, are associated with an organization called the Project for a New American Century (PNAC), having signed a PNAC statement of proposed United States foreign policy principles in 1997. *Id.* at 69. Other notable signatories to this policy statement include Vice President Dick Cheney and Deputy Secretary of Defense Paul Wolfowitz. Project for the New American Century, *Statement of Principles*, at <http://www.newamericancentury.org/statementofprinciples.html> (last visited July 17, 2003). The proposed policy seeks "to rally support for American global leadership" by increasing military strength and promoting a bold foreign policy designed to "challenge regimes hostile to our interests and values." *Id.* Interestingly, the chairman of the PNAC is William Kristol, one of the authors of this book. Project for the New American Century,

“distinctly American internationalism” with its post-9/11 foreign relations policy.<sup>17</sup> The Bush Doctrine emerged in response to the attacks of September 11, 2001, and represented a radical change in the administration’s pre-9/11 adoption of Clinton’s containment strategy.<sup>18</sup>

The authors devote one chapter to each of the three tenets of the Bush Doctrine: the United States will “reserve the right to preempt threats” (chapter 7—From Deterrence to Preemption), “actively promote its principles abroad” (chapter 8—From Containment to Regime Change), and take actions necessary to “remain the world’s sole superpower” (chapter 9—From Ambivalence to Leadership).<sup>19</sup>

In these chapters, discussion of the Bush Doctrine begins with questions. What is wrong with regime change if the goal is liberal democracy?<sup>20</sup> “[W]hat is wrong with dominance, in the service of sound principles and high ideals?”<sup>21</sup> Answering these questions, the authors define a mission for America, founded on the Bush Doctrine, that extends far beyond Iraq.

This book is open to criticism because it fails to fully and accurately discuss the Bush Doctrine within the context of international law. In chapter two, the authors cite Article 2, paragraph 4 of the United Nations Charter,<sup>22</sup> explaining its “proscription against interstate aggression” unless justified by self-defense.<sup>23</sup> Applying this law, the authors ably make their point that

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*About PNAC*, at <http://www.newamericancentury.org/aboutpnac.html> (last visited July 17, 2003). Given Kristol’s apparent leadership in shaping a foreign policy adopted by current administration officials prior to George W. Bush’s presidential candidacy, one might wonder if the Bush Doctrine would be more accurately referred to as the Kristol Doctrine.

17. *THE WAR OVER IRAQ*, *supra* note 3, at 63.

18. *Id.* at 71. The authors assert that the administration actually weakened its containment strategy by easing sanctions against Iraq. *Id.* This foreign-relations *faux pas* is attributed to dovish forces, led by Secretary of State Colin Powell, within the Bush administration. *Id.* at 70-71.

19. *Id.* at 74.

20. *Id.* at 95.

21. *Id.* at 112.

22. U.N. CHARTER art. 2, para. 4. (“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”). *Id.*

23. The self-defense clause appears in Article 51 of the United Nations Charter. U.N. CHARTER art. 51 (“Nothing in the present Charter shall impair the inherent right of individual or collective self-defense *if an armed attack occurs* against a Member of the United Nations . . . .”) *Id.* (emphasis added).

Iraq's unprovoked aggression toward Iran in the 1980s violated international law. Given the lack of a self-defense justification for U.S. attacks on Iraq, an application of this law to unprovoked U.S. attacks is warranted. However, the authors include no such discussion; there is no attempt to distinguish Iraq's illegal invasion of Iran from the United States' military action in Iraq.<sup>24</sup> This oversight, in itself, may not be fatal to the authors' argument for war. But the authors lost credibility with this reader by failing to examine the military actions of the United States and its adversaries with the same critical eye under existing international law.

To be fair, that discussion belongs in chapter 7's analysis of the preemption doctrine.<sup>25</sup> But an evenhanded treatment of how preemption, under the Bush Doctrine, fits within the context of international law is sorely lacking there, too. For example, attempting a legal justification of preemptive military action against Iraq, the authors simply state that "[t]oday . . . the legal basis for preemption has become so broad that it permits acts of anticipatory self-defense well before an attack becomes imminent."<sup>26</sup> With such scant discussion, the uninformed reader is left to conclude that the doctrine of anticipatory self-defense justifies an attack on Iraq. But this conclusion belies the fact that there is considerable disagreement on this point in the legal community.<sup>27</sup>

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24. The authors also fail to point out that the United States government supported this illegal war. George E. Bisharat, *Facing Tyranny With Justice: Alternatives to War in the Confrontation With Iraq*, 7 J. GENDER RACE & JUST. 1, 9 (2003) ("Iraq's aggression against Iran, today cited as one justification for a U.S.-led war against Iraq, was supported diplomatically and, ultimately, militarily by the United States.")

25. THE WAR OVER IRAQ, *supra* note 3, at 79-94.

26. *Id.* at 85.

27. Patrick McLain, *Settling the Score With Saddam: Resolution 1441 and Parallel Justifications for the Use of Force Against Iraq*, 13 DUKE J. COMP. & INT'L L. 233, 267-72 (2002) (examining the debate between restrictionist and counter-restrictionist scholars on whether U.N. Charter Article 51 "requires an armed attack as a predicate for a lawful exercise of self-defense"). *Id.* at 268.

Moreover, even legal scholars who support the position that nations retain a right to anticipatory self-defense argue pointedly against Bush's preemption doctrine:

The doctrine of preemption is not necessary to counter the terrorist threat and, more importantly, its potential costs outweigh its benefits. The requirements for state responsibility and for anticipatory self-defense . . . provide a sufficient basis for the United States to act to prevent terrorist attacks and the use of weapons of mass destruction without entering the uncharted and previously prohibited waters of

The authors take their argument one step further, asserting that the United States need not even claim a right to preemptive strikes to justify attacks on Iraq. They reason that such strikes would be legally justified by Iraq's violations of U.N. resolutions.<sup>28</sup> Once again, the authors' assertion, if not false, is far too simplistic to be credible.<sup>29</sup> The authors' treatment of this issue misleads the thoughtful reader seeking to understand the "honest and straight-forward" argument the authors sought to make in favor of the Bush Doctrine.<sup>30</sup>

In sum, this text is a quick and informative read. For this reader, its value lay not in the book's advocacy for the Bush Doctrine and a new "American mission," but in its concise, yet thorough, history of Iraq and U.S. foreign policy toward Iraq.

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preemption. An open-ended doctrine of preemption is a Pandora's box we should be very reluctant to open.

Greg Travalio & John Altenburg, *State Responsibility for Sponsorship of Terrorist and Insurgent Groups: Terrorism, State Responsibility, and the Use Of Military Force*, 4 CHI. J. INT'L L. 97, 118 (2003).

28. THE WAR OVER IRAQ, *supra* note 3, at 86.

29. See generally McLain, *supra* note 27, at 241-57. McLain's sixteen-page analysis of the legality of the use of force under Iraqi-related U.N. resolutions evinces just how tangled this issue is. *Id.*

30. "The War over Iraq wears its heart on its sleeve. In arguing for the liberation of Iraq, we try to make the case for war honestly and straight-forwardly, so the debate can be joined." THE WAR OVER IRAQ, *supra* note 3, at ix.